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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

JAMES H. DIDION et al.,

Plaintiffs, Cross-defendants and  
Respondents,

v.

ROCK GJURASHAJ et al.,

Defendants, Cross-complainants and  
Appellants.

E059386

(Super.Ct.No. CIVDS1208798)

OPINION

APPEAL from the Superior Court of San Bernardino County. Donna G. Garza  
and Brian S. McCarville, Judges. Affirmed.

Rock Gjurashaj, Katrina Gjurashaj and Jennifer Gjurashaj, in pro. per., for  
Defendants, Cross-complainants and Appellants.

Gregory W. Brittain for Plaintiffs, Cross-defendants and Respondents.

Defendants, cross-complainants and appellants Rock, Katrina and Jennifer Gjurashaj (collectively, the Gjurashajs) have filed a notice of appeal from a judgment entered against them on June 4, 2013, after a court trial, in favor of plaintiffs, cross-complainants and respondents Sylvia and James H. Didion (collectively, the Didions).

This action involves a lease with option to purchase property owned by the Didions located at 11708 Schim Circle in Yucaipa (property). In September 2010, the parties signed a purchase contract which gave the Gjurashajs 18 months in which to obtain financing for the property. During the 18-month period, the Gjurashajs would occupy the property and make monthly payments to the Didions to cover the mortgage being paid by the Didions. By May 2012, the Gjurashajs had not obtained financing and stopped making monthly payments to the Didions. After an unsuccessful attempt to remove the Gjurashajs from the property through an unlawful detainer action, the Didions filed a complaint for breach of contract and ejectment. After a short trial, the trial court found in favor of the Didions, judgment was awarded in the amount of \$15,234.74, and the Gjurashajs were ejected from the property.

The Gjurashajs' opening brief is indecipherable. They provide no comprehensible statement of facts and no law to support their claims of error. As such, we conclude that they have waived and/or abandoned any claim of error.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **A. COMPLAINT AND ANSWER**

On August 22, 2012, the Didions filed a complaint for breach of contract, ejectment and declaratory relief (complaint) in regards to the property.<sup>1</sup> The Didions alleged that on August 21, 2010, they entered into a written agreement entitled “purchase agreement” with the Gjurashajs (contract). The Didions alleged the agreement was a lease option agreement for the property, or in the alternative, was a land sale contract.

The Didions attached the contract, which was entitled “Purchase contract Lot #180, 11708 Schim Circle Yucaipa, Calif. 92399.” The contract was between the Didions, and Rock and Katrina. Rock and Katrina were to make a \$10,000 down payment and the total sale price was to be \$357,000. The terms were “1 year (one year) with month to month option for an additional 6 months, maximum total of 18 months from September 1, 2010—September 1, 2012.”<sup>2</sup> It also provided for monthly “mortgage” payments due and payable on the 5th day of each month and late if paid after the 15th day of the month. A \$100 late fee would be imposed for payments after the 15th

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<sup>1</sup> The Didions apparently initially started the process of removing the Gjurashajs from the property by initiating an unlawful detainer action. That action was dismissed on October 26, 2012, because the court determined that the contract was a lease option and not subject to its jurisdiction.

<sup>2</sup> It appears the September 2012 date was a mistake and no argument was made in the trial court that the contract extended to this date.

of each month. There was also language that if Rock and Katrina were unable to obtain financing within 18 months, that the \$10,000 down payment would be forfeited.<sup>3</sup>

The Didions alleged that the Gjurashajs had failed to make the monthly payments in May, June, July and August 2012. The total amount due was \$7,600. A late fee for each month in the amount of \$100, for a total of \$400, was also due. The Didions alleged that since the Ghurashajs' had breached the contract, they no longer could exercise the option to purchase the property. The damages of \$1,900 month and \$100 late fee would continue as long as the Gjurashajs remained on the property.

On August 15, 2012, the Didions served a three-day notice to pay rent or quit on the Gjurashajs. They also served a notice demanding payment of the late charges. The Didions also claimed that Jennifer lived on the property.

The Didions sought payment and possession of the property. They also sought a declaration that the option to purchase was no longer available. According to proof at trial, the Didions estimated the damages would be in the amount of \$36,000.

On October 18, 2012, the Didions filed a first amended complaint (FAC). They additionally alleged that Jennifer was added to the contract on September 17, 2010. They attached the signed amendment to the FAC. They provided additional facts that in May 2012, the property was appraised for \$307,000. Further, there was additional unpaid rent

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<sup>3</sup> We note that the contract also included language that, "Should any disputes arise between the parties as to the meaning of this contract, both parties agree to submit their differences to binding arbitration as provided by the court system." Here, the dispute was not based on the "meaning" of the contract but rather a breach based on noncompliance with its terms.

due for September 2012 and October 2012, and late fees for those months. The reasonable rental value of the property was \$1,900 per month.

The Gjurashajs filed an answer to the complaint. They provided a list of defenses to the complaint.

On February 22, 2013, the Gjurashajs asked for court-ordered mediation. The Didions opposed the mediation because the Gjurashajs were occupying the property and the Didions were losing money daily. The trial court set a trial date. The trial court refused the Gjurashajs' request to set the date in 90 days so they could conduct discovery because they were in possession of the property and the case had some priority.

#### B. CROSS-COMPLAINT AND ANSWER

The Gjurashajs, represented by counsel, filed a cross-complaint against the Didions (cross-complaint). They alleged breach of contract, specific performance, intentional misrepresentation, negligent misrepresentation, breach of the covenant of good faith and fair dealing, declaratory relief and injunction. They admitted they still resided on the property.

The Gjurashajs alleged that the contract was a written contract for purchase of the property. They admitted that Jennifer was added to the contract. They had paid the Didions \$10,000. They received notice from the Didions that the time period to obtain financing was extended to July 1, 2012. If they did not get financing by then, they were advised to vacate the property. They alleged that in April 2012, Jennifer obtained preapproval for a loan sufficient to purchase the property. No documents were included to support the claim.

The Gjurashajs also claimed they had opened escrow on May 15, 2012, but no documents were attached. They insisted that upon obtaining a preliminary title report, they first became aware of a judgment lien on the property recorded on April 16, 2012. The Didions had a judgment against them in the amount of \$10,369,023.53, and it was attached as a lien on the property.

The breach of contract, specific performance, intentional misrepresentation and negligent misrepresentation, and breach of the covenant of good faith and fair dealing claims were all based on the Didions' inability to transfer the property free of any liens. The Gjurashajs also sought declaratory relief that they be allowed to purchase the property under the contract. They also sought an injunction against the ejectment action. When the Didions entered into the contract, they knew or should have known that the lien was going to be imposed.

The Didions filed an answer to the cross-complaint on December 20, 2012. They raised numerous defenses to the cross-complaint.

### C. DENIAL OF EXTENSION OF TRIAL

On April 24, 2013, the Gjurashajs, represented by a new attorney, requested an extension to file a motion to compel discovery. They wanted a continuance of the trial date from April 29, 2013, to July 29, 2013. They alleged that the Didions had not been forthcoming in providing discovery.

On April 25, 2013, the matter was heard. The Didions opposed a continuance of the matter. The Didions claimed they had provided the requested discovery. The Gjurashajs' counsel stated he had been on the case for one month and had hoped that they

could settle the case, but had been unsuccessful. The trial court also noted that the records being sought by the Gjurashts—the judgment lien and courts documents—were public record and could easily be obtained. The trial court denied any further continuances.

D. TRIAL

The trial was held on May 1, 2013. The Didions called Alan Sims, who was a licensed real estate appraiser. He appraised the property's value on May 25, 2012, and determined it to be \$298,600.

The current value as of April 28, 2013, was \$285,750. The fair market rental value on the property would be \$1,900 to \$2,000.

James Didion testified. James was the owner of a real estate development company. James noted that the property became vacant and Katrina contacted him. Katrina told him that they wanted to rent the property because their previous home had been foreclosed on. At first he refused to rent the property to them, but relented after Katrina visited his office daily for about 10 days.

James prepared the contract. The Gjurashts paid him \$10,000 and they had 18 months during which to obtain financing to purchase the home. James made no other promises regarding the property. On September 17, 2010, Jennifer was added to the contract. James did not disclose any personal financial information to the Gjurashts when entering into the contract.

James and Katrina agreed to the name of the contract being a purchase contract. However, they agreed the Gjurashts were going to be renters until they could obtain

financing. James reviewed a letter that he sent to Rock and Katrina on March 14, 2012. In that letter, he expressed his concern that they had done nothing to complete the transaction. He notified them that as of April 1, 2012, the “monthly rental amount” would increase to \$2,100 each month. Further, James stated that they had until July 1, 2012, to have financing in place or they must vacate the property on July 1, 2012. Rent was paid in April 2012.

James believed the property went into escrow. He had not received any notice that a judgment lien had been put on the property; he discovered it when he saw the preliminary title report. James had done nothing to-date to remove the lien from the property. However, he had reached an agreement with the lien holder that the proceeds from the sale would go to the lien holder. The lien holder would not impede the sale of the property.

The mortgage payment on the property was \$1,982. The Gjurashajs were to pay him \$1,900. James “thought” there was an extension beyond the 18 months but that the Gjurashajs gave no consideration for the extension. In February 2013, James offered to go through with the deal if the Gjurashajs would pay the \$347,000 under the contract. The Gjurashajs never paid the purchase price. The contract called for \$100 per month late fee if the rent was not paid.

Katrina testified. Katrina had seen a for sale sign on the property. Katrina contacted James about purchasing the property, not renting it. She and Rock signed the contract. They added Jennifer to the contract because Rock and Katrina had previously been foreclosed on and they felt she had a better chance of obtaining financing. They



paid the rent until April 2012. When they received the March 14, 2012 letter regarding vacating by July 1, 2012, they worked hard to get financing.

Katrina believed the house belonged to them. James told them they could make improvements to the home. They added outside landscaping and hardscaping. They became concerned when they got the appraisal and found out about the lien. Katrina asked James about getting back the \$10,000, but was told it was gone. Katrina had the money to pay the down payment and to purchase the house in May 2012.

Katrina claimed she offered rent to James after May 2012, but he refused it. Katrina rejected the offer in February 2013 because she believed that title could not be transferred. She also admitted that she had been told by her attorney that James could provide clear title.

Jennifer also testified. She had lived in the property since 2010. She agreed that she entered into the contract to buy the property because she had a better chance of obtaining financing. In March or April 2012, she obtained preapproval for a loan. She notified James. She opened escrow. Jennifer and her family had the money to purchase the property.

The appraisal they obtained showed the value of the house was \$305,000; they would need a \$50,000 down payment. She found out about the lien and thought they could not buy the property. She was willing to move out if they received their down payment back. She was told by the Didions that she could not receive her down payment back. Staying in the property was the only way she thought she could get her money back.

Jennifer did not pay anything to the Didions to extend the contract. Jennifer and her family thought they had purchased the home when they signed the contract. At first Jennifer could not recall how much money she had in the bank in May 2012, but claimed it was enough to buy the property. Jennifer wanted the Didions to prove they could provide clear title and would not tender any money until it was proven.

The parties stipulated that there had been an offer by the Gjurashajs after the unlawful detainer was unsuccessful, to pay rent in exchange for a long-term lease agreement, but that the Didions refused a long-term lease.

After the close of evidence, counsel for the Didions argued that there was a contract for the Gjurashajs to purchase the property for \$357,000 with \$10,000 down and they had 18 months to pay the purchase price. They failed to comply with the contract. There was no legal modification of the contract to July 2012 because there was no consideration for the modification. The contract deadline was March 31, 2012. Even if the trial court felt that the Gjurashajs were entitled to their \$10,000 down payment, the amount of unpaid rent and late fees exceeded this amount. Further, the only offer to pay the rent was a long-term lease that the Didions did not want to accept.

The Didions also argued there was no evidence that the Gjurashajs had the ability to pay or could obtain a loan in May 2012. Their attorney should have advised the Gjurashajs that it was common for a lien holder on property to agree to the sale and receive the proceeds. The Didions damages totaled \$26,519.

Counsel for the Gjurashajs argued that the modification sent by the Didions extending the contract until July 2012 was valid. The consideration was payment of rent

in April 2012. The reason the sale did not go through in May 2012 was the judgment lien against the property. The Didions were unable to deliver title pursuant to the agreement in the contract. They would have moved out but the Didions refused to give back the \$10,000 down payment. Even though the Didions could not perform on the contract, they chose to evict the Gjurashajs. The Gjurashajs sought rescission of the contract and the payments made for rent. They also wanted to be reimbursed for any improvements made to the property.

E. RULING

The trial court made a final ruling after reviewing all of the documents and taking into account the hearing. The trial court determined that the contract was a “lease-option-to-purchase” contract. The contract was specific that the Gjurashajs had 18 months in which to purchase the property. The Gjurashajs had stopped paying rent after April 2012, and the Didions were entitled to the amount of past due rent and late fees. The court noted, “I recognize that the defense in this matter—Defendants in this matter are asking this Court for judgment for their breach of contract on the basis of specific performance. The Court does not find that they specifically performed in this matter in that they didn’t continue paying the rent in this matter.” The subsequent offer to sell the property had no consideration. The claims in the cross-complaint were all denied. The trial court, however, found “[I] do believe that defense is entitled to the \$10,000 down payment that they paid on the lease option since it wasn’t fulfilled, that lease-option contract.”

The trial court ruled, “So the Court is going to find total damages in the amount of, I believe, unpaid rent \$22,800, late charges of \$1,200, interest for unpaid rent in the

amount of \$1,2734.74, minus the down payment of \$10,000, for a total judgment of \$15,234.74. And Plaintiff is entitled to statutory costs and fees. Other than that, each party to bear their own costs and fees.” Counsel for the Didions inquired if the judgment also included ejectment and possession of the property and the trial court responded, “yes.”

On May 30, 2013, the Gjurashajs—having fired their attorney—filed a motion to vacate the judgment. They insisted they were being taken advantage of by the Didions and that their counsel had provided ineffective assistance. Their attorney refused to present their evidence at trial.

A writ of possession was issued on June 13, 2013. However, the sheriff’s department refused to eject the Gjurashajs because of what it deemed improper information on the writ of possession. Counsel for the Didions filed an ex parte application to have the writ of possession corrected. The Gjurashajs opposed the ex parte application arguing that since their motion to vacate the judgment was pending, the writ of possession could not be enforced. The ex parte was heard on July 2, 2013. The trial court found that the writ of possession was proper and that the sheriff’s department should not have rejected the writ. The sheriff’s department was ordered to accept the writ of possession.

A hearing on the motion to vacate the judgment was conducted on July 16, 2013. The trial court found no basis for vacating the judgment and it was denied.

On August 14, 2013, the Gjurashajs filed a petition for writ of supersedeas in this court in order to stay their ejectment from the property. We denied the writ finding, “The

petition for writ of supersedeas and request for immediate stay are DENIED. A judgment for possession of real property is stayed only by posting an undertaking in an amount fixed by the trial court to cover the value of occupation and waste. (Code Civ. Proc. § 917.4.)”

## **DISCUSSION**

### **A.     INADEQUACY OF APPELATE BRIEF**

The instant appeal lacks merits because the arguments in the Gjurashajs’ brief are incoherent and they do not cite to any legal authority to support their claims. As such, any claims of error are waived and/or abandoned.

“‘An appealed-from judgment or order is presumed correct. [Citation.] Hence, the appellant must make a challenge. In so doing, he must raise claims of reversible error or other defect [citation], and ‘present argument and authority on each point made’ [citations].’” (*Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 544, fn. 8.)

Some cases hold that the “failure of an appellant in a civil action to articulate any pertinent or intelligible legal argument in an opening brief may, in the discretion of the court, be deemed an abandonment of the appeal justifying dismissal.” (*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119.) Other courts have held, “[a]ppellate briefs must provide argument and legal authority for the positions taken. ‘When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived.’” [Citation.] . . . The absence of cogent legal argument or citation to authority allows [the] court to treat the contention as waived.’ [Citations.]” (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956;

see also Cal. Rules of Court, rule 8.204(a)(1)(B) [an appellate brief must “support each point by argument and, if possible, by citation of authority”].) “[I]t is incumbent upon an appellant to present argument and authority on each point made.” (*County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576, 591.)

The brief filed by the Gjurashajs does not provide a concise procedural background or statement of facts as required on appeal. They fail to provide citations to the record that support any of their claims of error, and they appear to refer to events that occurred that are not part of the record on appeal. Although they provide some citations to the record as to the proceedings below, they do not provide adequate citation to the record showing error occurred. In addition, the Gjurashajs insist that the trial court erred, but provide absolutely no legal authority for their claims. This failure to support their claims with reasoned argument and citation to authority waives the claims on appeal.

The fact that the Gjurashajs are representing themselves in this appeal does not excuse the inadequacy of their brief. An appellant proceeding in propria persona, must “‘be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys.’ [Citation.] Indeed, “‘the in propria persona litigant is held to the same restrictive rules of procedure as an attorney.’” [Citation.]” (*First American Title Co. v. Mirzaian* (2003) 108 Cal.App.4th 956, 958, fn. 1.)

Further, we cannot attempt to decipher their claims or make arguments for the Gjurashajs. We have thoroughly outlined the facts of this case and there are numerous issues that could be raised on appeal by the Gjurashajs. Any attempt on our part to determine these claims would exceed our judicial authority. “We are not bound to

develop appellants' arguments for them." (*In re Marriage of Falcone* (2008) 164 Cal.App.4th 814, 830; see also *Cahill v. San Diego Gas & Electric Co.*, *supra*, 194 Cal.App.4th at p. 956.)

Since we cannot discern with certainty the claims raised by the Gjurashajs in their opening brief (and their reply brief is essentially a restatement of the opening brief), and the fact that they have failed to provide any legal authority to support their claims, we deem all of their claims waived or abandoned on appeal.

### **DISPOSITION**

We affirm the judgment. Respondents are awarded their costs on appeal.

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MILLER  
J.

We concur:

HOLLENHORST  
Acting P. J.

CODRINGTON  
J.